

UNITED STATES DISTRICT COURT  
DISTRICT OF SOUTH CAROLINA  
FLORENCE DIVISION

Eric Todd Burgess, #349367,	)	C/A No. 4:12-3216-JFA-TER
	)	
Plaintiff,	)	
	)	REPORT AND RECOMMENDATION
vs.	)	
	)	
Sgt. Amy Bowers; Gerald K. Potoka, Senior)		
Chaplain; South Carolina Department of)		
Corrections; Lt. Thompson; Lt. Pamela Phelps;)		
Major Seyward; Officer Chris Johnson; Asst.)		
Warden Washington; Asst. Warden Ingram;)		
Warden Cecilia Reynolds,	)	
	)	
Defendants.	)	
	)	

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The Plaintiff, Eric Todd Burgess, filed this action on November 8, 2012, alleging various claims for violations of his constitutional rights pursuant to 42 U.S.C. § 1983. The Plaintiff is an inmate currently housed at the Kershaw Correctional Institution (“KCI”). Before the undersigned is the Plaintiff’s motion for default judgment. (Document #67.)<sup>1</sup>

On July 8, 2013, Plaintiff filed a motion for default judgment asserting that his complaint was filed on December 13, 2012, and served on the Defendants February 20, 2013. Plaintiff states that “the Defendants in reference are one Sgt. Amy Bowers and one Gerald K. Potoka.” (Doc. # 67). Plaintiff asserts that “more than 20 days have elapsed since the date on which the Defendants herein were served with summons and a copy of the Plaintiff complaint, executing the date thereof.” (Id.). Defendants filed a response in opposition asserting that they filed a timely answer. (Doc. # 76).

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<sup>1</sup>All pretrial proceedings in this case were referred to the undersigned pursuant to the provisions of 28 U.S.C. § 636(b)(1)(A) and (B) and Local Rule 73.02(B)(2)(d), DSC. Because this is a dispositive motion, the report and recommendation is entered for review by the district judge.

It is recommended that this motion for default judgment (doc. #67) be denied. The court entered an Order authorizing service of process on February 20, 2013. (Doc. #18). The Summons were issued as to Defendants Bowers and Potoka on February 20, 2013, but that they were not served until May 21, 2013. (Docs. #21, 48 and 49). Thus, the deadline for responding was June 11, 2013. Prior to the service of the initial Summons and Complaint on these Defendants, Plaintiff amended his complaint. (Doc. #24). On June 10, 2013, Defendants Bowers and Potoka filed a motion requesting an extension of time to file their answer to the complaint and amended complaint. (Doc. #51). This Court entered an Order on June 10, 2013, granting Defendants' motion and giving Defendants until July 2, 2013, to file their answer. (Doc. #53). Defendants Bowers and Potoka filed their answer on July 1, 2013. (Doc. #60). Therefore, Defendants Bowers and Potoka filed a timely responsive pleading. Accordingly, it is recommended that Plaintiff's motion for default judgment be denied.

### **CONCLUSION**

Based on the above reasoning, it is RECOMMENDED that Plaintiff's motion for default judgment (doc. #67) be DENIED.

Respectfully submitted,

s/Thomas E. Rogers, III  
Thomas E. Rogers, III  
United States Magistrate Judge

September 23, 2013  
Florence, South Carolina

**The parties' attention is directed to the important notice on the next page.**